

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

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August 16, 2021

The City Council of the City of Gardner, Kansas met in regular session on August 16, 2021, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with Mayor Steve Shute presiding. Present were Councilmembers Todd Winters, Mark Baldwin (via computer), Kacy Deaton, Randy Gregorcyk, and Tory Roberts. City staff present were City Administrator James Pruetting; Deputy City Administrator Amy Nasta; Finance Director Matthew Wolff; Police Chief James Belcher; Utilities Director Gonzalo Garcia; Parks and Recreation Director Jason Bruce; Community Development Director David Knopick; Public Works Director Kellen Headlee; City Attorney Ryan Denk; and City Clerk Sharon Rose. Others present included those listed on the sign-in sheet and others who did not sign in.

CALL TO ORDER

There being a quorum of Councilmembers present, Mayor Shute called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Shute led those present in the Pledge of Allegiance.

PRESENTATIONS

PUBLIC HEARINGS

- 1. Hold a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the distribution of cereal malt beverage, wine, and spirits samples within 200 feet of a school, church or library during the Grand Slam Craft Beer, Wine and Spirits Fest to be held October 1, 2021 at Celebration Park**

Councilmember Winters made a motion to open a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the distribution of cereal malt beverage, wine, and spirits samples within 200 feet of a school, church or library during the Grand Slam Craft Beer, Wine and Spirits Fest to be held October 1, 2021 at Celebration Park

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

No members of the public came forward.

Councilmember Gregorcyk made a motion to close the public hearing.

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PUBLIC COMMENTS

Deana Kincade, 20835 S. Cedar Niles, Spring Hill, manages a fireworks tent in Gardner. She expressed concerns with another tent and had called police twice. She wants the council to be aware of issues with that vendor. They were shooting fireworks a few feet from the tent, and one fell over and went into the tent. She said the public does shoot off fireworks in the old Price Chopper parking lot, but they will leave when asked. The tent in front of the old building is unsafe. She suggested additional language in the permit application that they can't shoot close to the tents.

CONSENT AGENDA

- 1. Standing approval of the minutes as written for the regular meeting on August 2, 2021**
- 2. Standing approval of City expenditures prepared July 30, 2021 in the amount of \$431,228.63; and August 6, 2021 in the amount of \$316,714.12**
- 3. Consider accepting a quit claim deed from Prairiebrooke Development Company, L.P. and authorize the purchase of Tract "A"**

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- 4. Consider authorizing an agreement with Automated Merchant Systems, Inc. (AMS) for credit card processing services for the Utility Billing Division's integrated voice response system (IVR)**
- 5. Consider accepting the dedication of right-of-way and easements for the Waverly, US-56 to Fountain Project**
- 6. Consider authorizing the execution of an agreement with Go Full Cloud for Office 365 licensing**
- 7. Consider reappointments to the Airport Advisory Board**
- 8. Consider the execution of a Right-of-Way Maintenance Agreement for the Prairie Trace Estates development project**
- 9. Consider the acceptance of permanent easement dedication documents for the Prairie Trace Sanitary Sewer Improvements project**
- 10. Consider an amendment to the current engineering services contract with George Butler and Associates (GBA) for the design of the West Prairie Trace Sanitary Sewer Improvements**
- 11. Consider appointing a City of Gardner representative to the Kansas Municipal Gas Agency Board of Directors**
- 12. Consider accepting a Water and Development Agreement between Conestoga Expansion, LLC and the City of Gardner**

Councilmember Deaton made a motion to approve the Consent Agenda.

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PLANNING & ZONING CONSENT AGENDA

COMMITTEE RECOMMENDATIONS

- 1. Consider adopting an ordinance approving a rezoning for the proposed Treadway Apartments, and consider accepting the associated Site Plan**

Community Development Director Knopick presented a rezoning for a parcel just over 2 acres in size. It's down-zoning from C-3 to R-3. The rezoning was previously approved as part of the Grata development, but they need additional land in the R-3 district.

Councilmember Gregorcyk made a motion to accept the recommendation of the Planning Commission and approve an ordinance changing the zoning classification or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2714.

Gregorcyk:	Yes
Roberts:	Yes
Baldwin:	Yes
Deaton:	Yes
Winters:	Yes
Shute:	Yes

- 2. Consider adopting an ordinance approving a rezoning for the proposed Cypress Creek subdivision, and consider accepting the associated Preliminary Development Plan**

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Community Development Director Knopick said this is just under 100 acres north of the high school and poplar. It was annexed into the city on June 21, 2021. It retained the county zoning RUR district. As part of this development request, the applicant is requesting an RP-2 zoning. This is for a single-family development. The RP-2 request is because of the lot size. The lots are smaller than the standard suburban lots that R-1 districts allow. The R-1 district has a minimum lot width of 70 ft. The lots proposed are in the 50-65 ft range. Because this is a planned district and is deemed a single-family development, the preliminary plan is also part of this action. If the rezoning ordinance is approved, the preliminary plan will become part of the regulations for the development site. Any changes to the proposed development would require a public hearing in front of the Planning Commission. The comprehensive plan identifies this parcel as low-density residential future land use, so this proposal is in conformance with the plan.

Councilmember Gregorcyk noted the proximity to the high school and asked if traffic studies will be done. Director Knopick said a preliminary traffic study was done. The development has 289 lots divided into pods so not all traffic will enter/exit on Madison. Gregorcyk asked about improvements to 167th on the north side. Knopick said the increased development on 167th will trigger improvements. New developments like this one will get safety-oriented improvements. Public Works Director Headlee said the traffic studies will take into account peak traffic counts. Staff will collect data. Gregorcyk asked about the phased approach. Knopick said they have four phases.

Harold Phelps, Phelps Engineering said the first two phases will start in the south end, then move north. Gregorcyk asked how long it would take. Mr. Phelps said each phase will take about a year. They plan to start a phase next year, and it will be a year to build out while building the next phase, so it will be 5-6 years to completion. Mayor Shute noted two points of conflict. The first phase, westbound Fountain, exits onto Waverly, and the two sub streets line up with the high school. Did they have any discussion with school district? Phelps said they submitted the traffic report to the school district, and have had conversations. They haven't indicated any opposition. Traffic engineers recommend limiting left turn movement in the mornings on the main entrance. Councilmember Roberts expressed concerns about the intersection of Waverly and 167th. There is a stop sign for Waverly, but not for 167th. With extra development, that intersection may need to be included. Phelps said it was included, and there wasn't a negative impact on it, but they will monitor it. Councilmember Winters asked if there was any comment at the Planning Commission. Knopick said there were residents at the meeting to see the presentation and had inquiries about some items, and there were some comments after the meeting. No one stood up and spoke in opposition or support of the item. The applicant will consider the comments in the final plan. Winters asked what the price range will be for the smaller footprint homes. Knopick the lots are in the 50 ft range because of the streamway and the open space they retained. Don Draper, Rauch Coleman Homes, said they haven't determined the lineup for these homes. The product will fit on 40 ft pad, and the homes will range from 1200 sq ft to 2000 sq ft. Based on today's costs, they can expect them to fall in the \$275,000-350,000 price range.

Councilmember Gregorcyk made a motion to accept the recommendation of the Planning Commission and approve an ordinance changing the zoning classification or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2715.

Roberts:	Yes
Baldwin:	Yes
Deaton:	Yes
Winters:	Yes
Gregorcyk:	Yes
Shute:	Yes

OLD BUSINESS

NEW BUSINESS

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1. Consider a request for a Waiver of the Distance Limitation and a special event permit to allow for the distribution samples of cereal malt beverages, wine and spirits within 200 feet of a school, church or library during the Grand Slam Craft Beer, Wine and Spirits Fest to be held October 1, 2021 at Celebration Park

City Clerk Sharon Rose said this is a housekeeping item related to the public hearing held at the beginning of the meeting to allow for samples of spirits, wine and beer at Celebration Park.

Mayor Shute asked for the definition of a sample in this case. Parks Director Bruce said one sample is a 2 oz. glass that attendees get with the purchase of their tickets. Councilmember Gregorcyk asked if the barbeque event will be in the parking lot. Bruce said they changed it to a different weekend. Councilmember Baldwin noted the preliminary agenda included a waiver for the beer garden, and asked why it was pulled. Bruce said they were considering a public event in conjunction like years past, but because the events have been separated, staff pulled it for this year.

Councilmember Deaton made a motion to approve a Waiver of the Distance Limitation and a special event permit to allow for the distribution of samples of cereal malt beverages, wine and spirits within 200 feet of a school, church or library during the Grand Slam Craft Beer, Wine and Spirits Fest to be held October 1, 2021 at Celebration Park

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

2. Consider authorizing the execution of a contract with Allied Power Group for repair and improvement work on the Gas Turbine cooling system

Utilities Director Gonz Garcia said they have a project next year for replacing the controls on the gas turbines. Before they can do that, they need to service the cooling system. The cooling system is used to cool the oil that is used for lubricating the bearings and gearbox and for controlling a hydraulic fuel valve. Currently, staff cannot lower the temperature of the oil low enough.

Councilmember Gregorcyk asked how much they need to invest in this hardware before it becomes upside down. Garcia said they inspect it every year, and the only weak link is the cooling system. Mayor Shute noted the winter event where wholesale gas and electric prices went extremely high. They discussed having the turbines running as a source of power, but determined it would cost more money to run the turbines than it would to buy high priced wholesale electric. If they aren't going to run at times when there are high costs on the wholesale market, when would they run these? Garcia said the heat rate efficiency is bad with the gas turbines. There are other units in the Southwest Power Pool that can generate cheaper, but the city has to have capacity. The gas turbines offer 27 megawatts of capacity. Without that, they would have to buy a pay per capacity at 2.5 per kilowatt-hour per month or about \$400,000 a year. Investing in the control system will cost around \$1 Million, and they would pay the pay per capacity that in 3 years. Although the units won't run, the city has capacity to purchase energy from the system. Without the capacity, the city would pay for the capacity and the energy.

Councilmember Deaton made a motion to authorize the City Administrator to execute a contract with Allied Power Group for repair and improvement work on the Gas Turbine cooling system in the amount of \$138,720.

Councilmember Winters Seconded.

With a majority of the Councilmembers voting in favor of the motion, the motion carried.

Absent - Baldwin

3. Consider adopting an ordinance establishing the date and time limitations for the discharge of fireworks within the City of Gardner

Deputy Administrator Amy Nasta said at the August 2nd meeting, consensus was provided to change dates and times when the discharge of fireworks is allowed in the city for the observance of Independence Day to July 2-4th, from 10am-11pm each day. Consensus was also provided to add December 31 from 11:30pm to 12am and January

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1 from 12am to 12:30am as dates and times for consideration when the discharge of fireworks is allowed in the city in observance of New Year's Eve. The proposed ordinance fulfills these requests.

Councilmember Gregorcyk asked if emails would be included in the record. City Clerk Rose did not receive that correspondence.

Cheryl Marquis, 112 S. Oak St. asked if the discharge of fireworks from the public includes shooting guns. She heard some on the 4th of July. Mayor Shute said no, both the county and the City of Gardner prohibit that.

Councilmember Gregorcyk said he will provide emails to the city clerk for inclusion in the record (included at the end of this document). He noted Jennifer Smith is against fireworks, and is for mitigation efforts. He noted Megan Middendorf supports only shooting fireworks on the 4th of July until 11pm.

Councilmember Baldwin suggested decoupling NYE from 4th of July. They were all in consensus for 2-4th and can move forward with that piece. Only a few residents contacted them about NYE. He is interested in doing a survey to gauge interest. Shute said he didn't see much interest in NYE after the discussion. Shute asked if there was consensus to decouple. Consensus was achieved. City Attorney Denk clarified they are striking romanettes ii and iii. Shute confirmed.

Councilmember Deaton made a motion to adopt an ordinance of the City of Gardner, Kansas, amending Section 9.05.030 of the Gardner Municipal Code relating to the discharge of fireworks, as amended.

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2716.

Baldwin:	Yes
Deaton:	Yes
Winters:	Yes
Gregorcyk:	Yes
Roberts:	Yes

COUNCIL UPDATES

Director Wolff said staff will begin sending out notices to customers about restarting shut-offs and assessing late fees for those who are behind on utility payments. The moratorium ended in May, but staff gave them more time through the hot summer. The weather is more accommodating in October. The notice will direct them toward assistance programs through the county and state, and staff will work with them on payment plans.

Councilmember Gregorcyk asked what percentage of the city is affected. Wolff said about 1500 customers or 17%. The delinquency is about \$1.1 Million. Shute said some have already been placed on a payment plan. Wolff said there are a lot of assistance programs, and they want to make sure residents know about them. Gregorcyk asked how staff will communicate this to the entire city. Wolff said they could do a combination. They can email, but also send out a letter with the utility bill.

Mayor Shute asked City Clerk Rose about CPAC interviews. Rose said they would begin tomorrow night.

Director Garcia said WaterOne is almost finished with the water extension for Prairie Trace and should begin testing next week. For the sewer, the force main is in place and they have started on the lift station. For the electric, the overhead is up and they are working on Prairie Trace Estates and Meadows underground. Shute noted movement on New Trails Parkway.

Director Bruce said the pool is now on weekend-only hours until Labor Day. Revenue is about \$118,000 in admissions, compared to \$130,000 in 2019. Staff wrapped up fall soccer registration. In 2019, they had 573. This year, they have 674, and this is the highest the soccer program has ever had.

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Director Knopick said public offense code states amount of distance for discharge of fireworks from stands in two locations. There are ways they can get the information out on this. Councilmember Gregorcyk asked if it's included in the permit. Knopick confirmed; when they apply for the permit, staff gives them a copy of the code.

Mayor Shute asked Director Headlee about the Waverly Road project, noting access issues with the high school that were addressed. Headlee said they have alleviated the majority of the issues. Councilmember Gregorcyk asked if they addressed the rainwater runoff going westbound off the sidewalk. Headlee said they have a majority of the plans for that area, and they are still considering options. Councilmember Roberts asked if staff has been in contact with concerned citizen. Headlee confirmed.

City Administrator Pruetting said as they approach end of budget process, staff provide a comprehensive look to council. In recent weeks, he discussed upward wage pressure. They haven't done a wage study in several years, but they monitor wages on an annual basis. Two weeks ago, information came out and the city may have a crisis with the police dept. before the next budget cycle comes around. They are lagging behind significantly over the 2nd year. They did an adjustment 4 years ago. Other police departments have step program. Gardner is \$2-\$4 behind other agencies, who reacted to the shortages by upping their pay. The city has 3 vacancies now, and anticipate 3 more by the end of the year. They get a tenth of the applicants they used to get. Staff will put options together to fix this issue and not have to readdress every few years and bring it back before the body. They plan to keep it budget neutral and they will delay the hiring of the two officers that are in the budget draft. They were not able to address it before this budget cycle ends. Mayor Shute noted the other communities who have gone to a step program and asked if that's what staff are thinking. Pruetting said that is one option. The steps are 4-5%, so with a 3% merit pool, the city falls behind every year. They also have issue with electric apprentice position; it's also \$3-\$4 below the market. They go through the apprentice program and leave immediately. They will look at the city's pay structure going forward. Staff will gather information in HR and do it internally, and get information around JOCO and MARC. Shute said there's upward wage pressure everywhere. Pruetting shared that the Highway Patrol is not scheduled training for CBSA officers. The city has one officer trained. The others are moving on to new jobs. One officer is not enough with the amount of truck traffic. Gregorcyk suggested a "train the trainer" program. Chief Belcher said they cannot do that. KHP has oversight and must certify officers.

Councilmember Gregorcyk noted he is for common sense fireworks. He asked if they can take the fireworks survey further. How do they reach folks that don't have access to the internet? Some people feel disenfranchised by not participating. Administrator Pruetting said it was a snapshot, and it was the most efficient way. Mailing a survey would be expensive, and they may not get 3,000 back. Mayor Shute said a mail ballot election would be costly. Gregorcyk doesn't suggest that. He noted a portion of the community doesn't have access to an online survey. They can discuss how to do better in the future. Shute said the only other option is a mail ballot election. It would be more reliable than an internet survey. Gregorcyk said he is discussing how they can have a survey through other means than online. Deputy Administrator Nasta said she received requests for accommodation and printed a paper survey. The paper surveys were included in the survey results. She and Director Headlee will bring PWAAC into the process in the future. Gregorcyk suggested a mailer in the utility bill that's already going in the mail. Councilmember Winters said 3000 is a good response and comparable to the last vote totals. Councilmember Deaton noted paper surveys have to be counted and tallied by hand, and suggested a flier that directs them to the website so they know the survey is out there. They can go to the library or a neighbor, but they'll know the survey is available. Gregorcyk wants to get more people involved.

Councilmember Deaton asked if there is there a way to not issue a fireworks permit to habitual violators. City Attorney Denk said there was no citation written. The code does have a provision about setting off fireworks within so far of the tent. To take action based on reports would have due process issues. Reports of incidents are not charged through municipal court. They can set up a system in the code if someone has substantiated violations, they could revoke the permit or not issue next year. Gregorcyk said they are first come first served permits for a set number of tents. Pruetting clarified they don't limit to a certain number; everyone who met the permit requirements got a permit. Gregorcyk asked if they can limit tents to a certain number. Pruetting said they can limit permits. Mayor Shute said if the offending vendor pulls a permit first, they get it.

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Councilmember Winters noted he likes the fireworks and is happy with the days that were approved, but the biggest complaints are on people who discharge outside of the days. Is there any way to focus on enforcement, like taking fireworks away or a fine? Chief Belcher said he is speaking with staff about what's working and what's not, and will work with city administrators on procedure for next year. Fireworks are difficult to trace. Once they see them and drive over, the fireworks are done. Officers have to see them or have someone willing to sign a complaint. Winters suggested setting examples with habitual residents. Belcher said if they make initial contact, they give a warning. They keep a log of addresses they visit, but to his knowledge, they haven't had to make a return call to the same house. Having zero tolerance removes discretion. There are things they can do internally. Staff will evaluate and discuss with administration on moving forward next year. Winter suggested other ways the city can help accommodate residents who suffer through fireworks. PWAAC could look into options. Mayor Shute said they can speak with residents in the disability community to ensure that what they come up with will work. Belcher noted that the 4th is a busy night. They have other calls for service that are higher priority, which take officers out of service. Gregorcyk said they need to find revenues to hire officers. Shute said staff presented a budget with a flat mill, but the consensus was to lower it half a mill. Gregorcyk said there are other revenue streams. Councilmember Roberts said she brought up police wages during budget talks. The need coverage everywhere, not just fireworks issues. Winters suggested increasing fees on tent permits.

Mayor Shute said that he, Deaton, and Roberts attended the ribbon cutting on the new water treatment expansion. He recommended those who couldn't attend to go out and see the facility. Shute commends utility staff and contractors. He asked when they will put the second set of laterals in. Director Garcia said the preliminary study and land acquisition is in the CIP for next year.

EXECUTIVE SESSION

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Deaton and seconded by Councilmember Winters the meeting adjourned at 8:29 p.m.

City Clerk

Below are the emails received as referenced by Councilmember Gregorcyk:

----- Original message -----

From: Meagan Middendorf <meaganmiddendorf14@gmail.com>

Date: 8/16/21 6:56 PM (GMT-06:00)

To: Mark Baldwin <mbaldwin@gardnerkansas.gov>, Randy Gregorcyk <rgregorcyk@gardnerkansas.gov>, sschute@gardnerkansas.gov, Tory Roberts <troberts@gardnerkansas.gov>, Todd Winters <twinters@gardnerkansas.gov>

Subject: Fireworks

Good evening,

I just wanted to let you all know that I think fireworks should only be shot off on the 4th until 11pm. Many citizens have to work the other days and allowing people to shoot them off until midnight is ridiculous. Citizens already can't follow the rules that have been set in years past and it's absurd that you all would think it's ok to allow the community to go so late. People have small children, dogs and some with disabilities who don't do well with multiple days of fireworks. I for one have dogs that I have to drug for a week because they can't handle it. A week is absolutely crazy!! I also have a small child who I would appreciate if unruly people wouldn't wake her either. Please consider all the citizens and pets when making this decision.

Thank you for your time,

Meagan Middendorf

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----- Original message -----

From: jennifer smith <jen.a.smith88@gmail.com>

Date: 8/16/21 3:46 PM (GMT-06:00)

To: Steve Shute <sshute@gardnerkansas.gov>, Tory Roberts <troberts@gardnerkansas.gov>, Todd Winters <twinters@gardnerkansas.gov>, Randy Gregorcyk <rgregorcyk@gardnerkansas.gov>, Kacy Deaton <kdeaton@gardnerkansas.gov>, Mark Baldwin <mbaldwin@gardnerkansas.gov>

Cc: James Pruetting <jpruetting@gardnerkansas.gov>, James Belcher <JBelcher@gardnerkansas.gov>, Daneeka Marshall-Oquendo <dmarshall-oquendo@gardnerkansas.gov>, Amy Nasta <anasta@gardnerkansas.gov>

Subject: Firework Discussion

Good Afternoon,

I wanted to take a brief moment to bring up items discussed over the past several years about the time frames of discharging fireworks.

It is known the council is pro-firework, you all represent close to 22,000 residents of this community. Over the last several weeks when you all have been discussing what the plans are for the next year, you all have still never brought up the efforts of accountability that I brought before you in the July 6th meeting. You as a council are accountable for ALL citizens. You have not discussed the process of stronger and stricter guidelines when rules are broken.

This last year, fireworks were immediately being shot off when the tents opened, all hours of the day and night. Even the days they were legal they were being shot off past 2am. Yes, we all know the fluke this year was the air show which had the Gardner PD stretched very thin.

If you all are going to vote in the way of the 2-4th which I am figuring will happen, what policies are you going to put in place that have to be upheld to protect those citizens that can not handle the fireworks. Year after year, no one has ever stood up for those citizens that can not handle the loud noises, the flash bangs for hours on end. It would be nice to have one council member stand for those that can not handle the fireworks and make sure those that break the rules are held accountable.

I have come to this council year after year about these issues, and feel that they are not taken seriously. I have neighbors and other residents of this community discuss how they have issues with the days and the hours of discharge and have asked them to email or talk to the council and they will not because they say it does not help. I am just letting you know how residents feel.

If fireworks are going to happen, there once again has to be accountability.

As I discussed with Mayor Shute after the council meeting on the 6th of July, this needs to be a registered voters citizens vote.

The survey had great response, but I do know that some children filled it out with coaching from their parents. They used different emails that were set up. Very sad the level of deceit that people would go through, as well as many residents did not fill out the survey as they do not have computers, a smartphone or an email.

I urge you to vote no for New Year's Eve, as that could open up another policy of people not following the guidelines, many people still have to work and do not get that next day off, and there are enough issues the Gardner PD has to deal with on NYE please do not add another layer. And if you are going to vote yes, are you prepared to staff up the police force with more funds and OT hours as well. New Year's Eve is not a good time to allow fireworks in my personal opinion.

Thank you again for your time and consideration on these issues that will be discussed this evening.

Jennifer Smith

913-221-4592